JAMS Institute

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ADR Case Update – 2024 - 1

Federal Courts

- **ENFORCEMENT REMEDIES UNAVAILABLE TO DEFAULTING PARTY**

  Bedgood v Wyndham Vacation Resorts, Inc.
  United States Court of Appeals, Eleventh Circuit
  2023 WL 8722023
  December 19, 2023

  Charles Bedgood and other timeshare owners (Owners) initiated arbitration against Wyndham Resorts, filing petitions with AAA as required by the Arbitration Agreements in their contracts. AAA dismissed their petitions on the grounds that Wyndham "failed to comply with AAA policies." AAA stated its intention to decline all future Wyndham arbitrations and directed Owners to proceed in litigation. Owners did so, filing a putative class action. Wyndham moved to compel arbitration with AAA or with a substitute arbitrator appointed by the court. The court rejected the motion, holding that Wyndham was in default of the arbitral forum. The court had no power under the FAA to compel arbitration against Owners who had fully complied with their contractual arbitral obligations. Wyndham was not entitled to a substitute arbitrator because the need for a substitute arose solely from Wyndham's failure to comply with AAA's rules. Wyndham appealed.

  The United States Court of Appeals, Eleventh Circuit, affirmed in part and vacated and remanded in part. Wyndham's failure to comply with the rules of its chosen arbitral forum rendered FAA enforcement remedies unavailable to them. The Court rejected Wyndham's claim that the determination of "default" must be made by an arbitrator rather than by an AAA administrator. The contracts stated that arbitration would be conducted in accordance with the AAA's Consumer Arbitration Rules, which "make clear that the determination whether a party has complied with the AAA's policies is an administrative decision." The Court vacated and remanded with respect to claims made against related Wyndham entities, as the AAA's determination was made against Wyndham but not specifically against those entities.

- **ARBITRATOR'S AWARD "UNSUPPORTED BY SUBSTANTIAL EVIDENCE"**

  Torres v Department of Homeland Security
  United States Court of Appeals, Federal Circuit
  2023 WL 8791947
  December 20, 2023

Crispin Torres, a deportation officer with the Department of Homeland Security, was removed from his position for being absent without leave and falsifying three certified records to conceal that absence. The union invoked arbitration on his behalf. The arbitrator assessed the case under the twelve factors set forth in *Douglas v Veterans Administration* and determined that the removal was reasonable and supported by a preponderance of the evidence. The union appealed.

The United States Court of Appeals, Federal Circuit vacated and remanded. Applying the review standard applicable to decisions of the Merit Systems Protection Board, the Court concluded that the arbitrator's decision was "unsupported by substantial evidence." The arbitrator incorrectly assessed *Douglas* factor six, which examines the "consistency of the penalty with those imposed upon other employees for the same or similar offenses," and factor ten, which examines the "potential for the employee's rehabilitation." In assessing both factors, the arbitrator failed to explain his reasoning for disregarding similar cases in which lesser penalties were imposed or to explain why those lesser penalties were unavailable to Torres, who had no prior disciplinary record and "excellent" job evaluations.

- **RETAIL MERCHANDISER WAS NOT INTERSTATE COMMERCE WORKER**

Fraga v Premium Retail Services, Inc.
United States District Court, D. Massachusetts
2023 WL 8435180
December 5, 2023

Sara Fraga worked as a Merchandiser for Premium Retail Services, creating product displays at stores within her assigned zone. Premium shipped products to Fraga's home, where she sorted and repackaged them before delivering them to stores and creating the displays. Fraga filed a class action against Premium, claiming that Premium failed to compensate her and other Merchandisers for the work they did at their homes. Premium moved to compel arbitration. Fraga opposed, arguing that she was exempt from arbitration enforcement under FAA Section 1's exemption for workers engaged in interstate commerce.

The United States District Court, D. Massachusetts, denied the motion to dismiss. Fraga was not a worker "engaged in interstate commerce." The exemption applies when the employee's work is "closely related to the act of transporting," and the employee performs that work "frequently." Fraga's work took, at most, 1 hour approximately 1-2 times/week and did not meet this standard.

- **"CORE" BANKRUPTCY ISSUE NOT SUBJECT TO ARBITRATION**

In re: Envision Healthcare Corporation
United States Bankruptcy Court, S.D. Texas, Houston Division
2023 WL 8607444

December 12, 2023

The Delaware Limited Liability Company Act (LLCA) provides, in section 18-304(a)(b), that "a person ceases to be a member" of an LLC when that "person" – defined to include an incorporated entity or LLC – initiates a bankruptcy case. AmSurg Holdings, LLC, held a 25% interest in the Folsom Endoscopy Center, LLC (FEC), and FEC's LLC Agreement gave AmSurg two board seats and certain managerial rights. AmSurg filed for bankruptcy, and two other FEC members – one of them, Gastroenterology Medical Clinic, Inc. (GMC) -- amended the LLC Agreement to strip AmSurg of its voting and managerial rights based on section 18-302(a)(b). AmSurg asserted that these actions violated the automatic bankruptcy stay, and GMC moved to compel arbitration.

The United States Bankruptcy Court, S.D. Texas, Houston Division denied the motion to compel arbitration and granted the motion to enforce the stay of litigation. A bankruptcy court may decline to enforce arbitration when the dispute involves a "core proceeding" whose "underlying nature derives exclusively from the provisions of the Bankruptcy Code." Under Bankruptcy Code section 541, a bankruptcy filing creates an "estate" that includes "all" of the party's "legal and equitable interests." By altering the legal and equitable rights of an LLC member, section 18-304 (a)(b) directly conflicted with, and therefore was required to "give way to," Bankruptcy Code section 541. All AmSurg's legal and equitable interests in FEC were property of the bankruptcy estate, and the LLC amendments stripping AmSurg of its interests were void.

California

- **ARBITRATION AGREEMENT WAS UNCONSCIONABLE**

Haydon v Elegance at Dublin
Court of Appeal, First District, Division 3, California
2023 WL 8743357
December 19, 2023

Sally Ann Haydon, who had dementia, was a resident at a nursing facility, Elegance at Dublin, for three days. Upon her admittance, Haydon signed a 40-page Residence and Care Agreement (R&CA) containing multiple appendices and attachments. Haydon sued Elegance for negligence, assault, and battery, and Elegance moved to compel arbitration. The court denied the motion, holding the R&CA's Arbitration Agreement unconscionable. Despite having previous knowledge that Haydon's mental capacities were compromised, Elegance had pressured her into signing quickly to secure an affordable rate. It presented her with a "long, dense agreement interspersed with several confusing signature blocks" and embedded its Arbitration Agreement in the last several pages of the R&CA amid twenty "miscellaneous" provisions. Elegance appealed.

The Court of Appeal, First District, Division 3, California, affirmed. In addition to the high levels of procedural unconscionability found below, three components rendered the Arbitration Agreement substantively unconscionable. First, a confidentiality provision

barred Haydon from disclosing "the existence, content, or results of the arbitration." This provision restricted Haydon's ability to gather information and, in the context of elder abuse, increased the dangers of recurrent abuse. Second, a JAMS rule limited discovery to a single deposition absent a determination by the arbitrator, with no provision for interrogatories or requests for admissions. When combined with the confidentiality provision, these limitations risked "frustrating" plaintiffs' rights under the Elder Abuse Act. Finally, the Agreement unconscionably required claimants to bear their own costs and fees. JAMS fees, which can be "up to $10,000.00 per day for a single-arbitrator arbitration," would be unaffordable to Haydon, who was on Social Security and had no retirement funds.

Case research and summaries by Deirdre McCarthy Gallagher and Rene Todd Maddox.

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